

REMARKS

With this Amendment, Applicants re-introduce Claim 12, which was previously withdrawn through accidental oversight. Claims 3, 4, 12, 28 and 29 are all the claims pending in the application.

General Remarks

Claim 12. Applicants respectfully submit that Claim 12 was mistakenly listed as withdrawn in the listing of claims in the 37 C.F.R. § 1.111 Amendment, filed on April 15, 2004. Applicants submit that only Claims 18-27, which were subject to a restriction requirement, were intended to be withdrawn, and that the arguments presented in the April 15 Amendment, as stated on pages 10 and 12, were intended to apply to Claim 12.

Therefore, Applicants respectfully request that the Examiner treat Claim 12 as a pending claim.

The Tsai reference. Applicants note that the Tsai reference (U.S. Patent No. 5,781,430), cited against Claim 28 on pages 3-5 of the current Office Action, has not been cited by Applicants on any IDS or by the Examiner on any PTO-Form 892. Therefore, Applicants respectfully request that the Examiner provide a PTO-Form 892 including this reference.

Claim rejections. Claim 29 stands rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement. Claims 3, 4, and 29 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Soumiya et al., U.S. Patent No. 5,696,764 ("Soumiya"), in view of Ichikawa, U.S. Patent No. 6,301,253 ("Ichikawa"). Claim 28

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stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Soumiya, in view of Ichikawa and Tsai, U.S. Patent No. 5,781,430 (“Tsai”).

Claim Rejection - 35 U.S.C. § 112

The Examiner rejects Claim 29 as allegedly failing to comply with the written description requirement, with respect to the recitation of “at least one of which has not previously been assigned a QOS class.” Applicants respectfully traverse this rejection for at least the following reasons.

With the current Amendment, Applicants amend Claim 29 for purposes of clarity and change “QOS class” throughout to “service class.” Applicants submit that this amendment is non-narrowing. As described in the Specification at least at page 9, lines 24-25, “service class” includes “service category and quality of service (QOS) class.”

Applicants note that the specification describes buffers not previously having been assigned a service class at least at page 8, lines 6-7 and at page 12, lines 15-17. Applicants therefore request that the §112, first paragraph rejection of Claim 29 be reconsidered and withdrawn.

Claim Rejections - 35 U.S.C. § 103

Regarding the Examiner’s §103(a) rejection of Claims 3, 4, and 29 over Soumiya and Ichikawa, and the Examiner’s §103(a) rejection of Claim 28 over Soumiya, Ichikawa, and Tsai, without commenting on the substantive merits of the Examiner’s rejection, Applicants respectfully submit that Ichikawa is not available as a prior art reference under §103(a).

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Applicants submit that the filing date of the present application (May 17, 1999) predates the issue date of Ichikawa (October 9, 2001). Thus, Ichikawa, at best, would only be available as prior art 35 U.S.C. § 103 based on 35 U.S.C. § 102(e). Under 35 U.S.C. § 103(c), Applicants may make a showing of common ownership to overcome a rejection under §103(a), if the reference is only available as a reference under §102(e), (f) or (g).

The undersigned hereby represents that Ichikawa and the claimed invention of the present application were, at the time the invention of the present application was made, owned or subject to an obligation of assignment to NEC Corporation.

In view of the above, it is respectfully submitted that Ichikawa is not available as prior art under 35 U.S.C. § 103, and it is requested that the §103(a) rejections of Claims 3, 4, 28, and 29, based on Ichikawa, be reconsidered and withdrawn.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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